

CHAPTER 46 -- SMALL CLAIMS PROCEDURES

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CHAPTER 46 -- SMALL CLAIMS PROCEDURES

46.1 **Authority and Purpose.** This ordinance is enacted pursuant to the Red Cliff Constitution, Article VI section 1(p). The purpose of this chapter is to establish procedures for the resolution of disputes, occurring within the boundaries of the Red Cliff Reservation, and involving claims of \$5000.00 or less.

46.2 **Definitions.**

- (a) "Clerk of Court" or "Clerk" shall mean the Clerk of the Red Cliff Tribal Court.
- (b) "Court" shall mean the Red Cliff Tribal Court.
- (c) "Tribal Judge" or "Judge" shall mean a judge of the Red Cliff Tribal Court.
- (d) "Reservation" shall mean the lands of the Red Cliff Band of Lake Superior Chippewa Indians.
- (e) "Small Claims" shall mean a claim of money, service or property or combination of these with a value of \$5,000.00 or less.

46.3 **Jurisdiction.** The Red Cliff Tribal Court is authorized to hear small claims actions if all of the following exist:

- (a) The claim is for recovery of money, performance of a contract, and/or recovery of property; and
- (b) The total amount of the claim is for \$5,000.00 or less; and
- (c) One of the parties is a member of the Red Cliff Band of Lake Superior Chippewa Indians and a resident of the Red Cliff Indian Reservation, and
- (d) The incident or cause of action occurred within the boundaries of the Red Cliff Indian Reservation, and
- (e) There is documentation of efforts to satisfy the dispute prior to bringing the action into Court.

46.4

Commencement of an Action.

- (1) An action under this chapter is commenced by the filing of a summons and complaint as prescribed by this section. The summons and complaint shall be a single document setting forth the following:
 - (a) The names and addresses of the parties.
 - (b) The case number as assigned by the Clerk.
 - (c) A command to the respondent to appear in Court at a date and time.
 - (d) A brief statement of the facts, including approximate date(s) and location of the transaction giving rise to the action.
 - (e) The relief requested.
 - (f) A statement that failure to appear may result in a judgment taken against the respondent for the relief requested, plus costs and attorney's fees.
 - (g) The dated signature of the petitioner and the Clerk of Court.
- (2) The Clerk of Courts shall make available forms for the summons and complaint in actions brought under this Chapter.
- (3) The return date specified under 46.4(1)(c) shall be no less than ten (10) days and no more than forty-five (45) days from the date of issuance of the summons and complaint. Service, if by mail shall be made no less than eight (8) days prior to the return date. Service, if personal, shall be no less than five (5) days prior to the return date.
- (4) The Clerk of Courts shall not accept for filing any complaint that is not signed before the Clerk of Court or a Red Cliff Tribal Judge, or a summons and complaint that is not accompanied by the filing fee, or the mailing fee, if applicable.

46.5

Service of the Summons and Complaint.

(1) Personal Service. The petitioner shall attempt to cause personal service of the summons and complaint. These attempts shall be documented. The service may be made by anyone eighteen (18) years of age or older who is not a party to the action. Personal service is accomplished by the hand delivery of a summons and complaint to the respondent in person, or to the respondent's residence to a person age sixteen (16) years of age or older who resides with the respondent. Upon completion of personal service, the server shall execute an affidavit of service, which shall be filed with the Clerk of Court.

(2) Service by certified mail. If, with due diligence, personal service cannot be accomplished the petitioner shall then request the Clerk of Court to make service by certified mail. The Clerk of Court shall then mail a copy of the summons and complaint to the respondent(s). This mailing shall be by certified mail with a return receipt requested, return requested if not claimed after five (5) days. The Clerk shall charge the party requesting the use of mail a fee for this service. Service by mail shall be complete upon mailing unless the envelope enclosing the summons and complaint is returned by the post office, unopened, prior to the return date. The return receipt shall be retained by the Clerk in the case file where it shall constitute proof of service.

(3) Service by publication. If, with due diligence, personal service and service by mail cannot be made, service can be made by publication. Publication of the summons shall be made in the Bayfield County Journal, the Ashland Daily Press and in a newspaper likely to give notice to the person affected. Service by publication shall be for two consecutive publications of the Bayfield County Journal, and once in each of two consecutive weeks in the Ashland Daily Press and the newspaper likely to give notice to the person affected. The published summons shall state at which the complaint may be obtained and the location, date and time of the hearing. Proof of publication shall be provided to the Clerk, where it shall be placed in the case file where it shall constitute proof of service by publication.

46.6 Answers, Counterclaims, and Cross-Complaints.

(1) All parties shall appear on the return in writing at the hearing on the return date. If an answer, counterclaim, or cross-complaint is made in writing, any such pleading shall be filed with the Clerk with copies served on all parties.

(2) Written pleadings shall not substitute for personal appearance or appearance by an advocate or attorney on the return date. Failure of any party to appear on the return date shall result in a default judgment as provided for in section eight (8) of this Chapter.

(3) Upon the return date, the Court shall determine:

a) If the parties wish to settle their differences without trial, if the parties settle their differences the Court shall enter a judgment as the parties agree.

b) If the respondent does not wish to make a defense or raise a counterclaim, judgment may be entered in favor of the petitioner.

c) If the parties cannot reach a settlement then a trial date shall be set. The trial may be had on the return date if the parties agree.

(4) Any party may request a substitution of judge for cause by making such request at the hearing on the return date.

(5) The Court may, at its discretion, adjourn the return date, as the interest of justice requires.

46.7 Trials.

(1) All trials under this chapter shall be to the court without a jury.

(2) A trial under this chapter shall be conducted informally. Each party shall be allowed to present evidence and arguments, and to examine witnesses to the extent reasonably required for full disclosure of the pertinent facts.

(3) The Court shall admit all evidence having reasonable probative value but may exclude irrelevant or repetitious evidence or argument. An essential finding of fact may not be based on oral hearsay unless it would otherwise be admissible under the hearsay exception as defined in the Federal Rules of Procedure.

(4) The judge may question witnesses.

(5) The judge shall establish the order of proof and argument consistent with fair a prompt resolution to the dispute.

46.8 Judgment.

(1) If the petitioner fails to appear on the return date or at trial the court may dismiss the complaint. Dismissal under this subsection shall be without prejudice unless a complaint filed by the petitioner arising from the same transaction or occurrence has been dismissed previously on the same grounds.

(2) If the respondent fails to appear on the return date or at trial the court may enter judgment for the petitioner upon due proof of facts, which show the petitioner, is entitled to judgment.

(3) After trial, the court may give an immediate oral decision, or it may file a written finding of fact, conclusion of law, and judgment, no later than thirty (30) days following the trial.

(4) Judgment may be reopened at any time within one (1) year of judgment in any case where service was by mail or publication and the respondent did not receive actual notice of the action and did not appear in the action or otherwise submit to the jurisdiction of the court, and the respondent petitions the court within fifteen (15) days of receiving actual notice of the action or judgment. Such petition shall be verified and shall state the facts upon which the petitioner bases the claim to reopen the matter under this subsection. Upon receipt of this petition the court shall determine if a hearing shall be held in this matter or if judgment shall remain as ordered. If the court determines a hearing shall be

held, notice of said hearing shall be sent to all parties involved.

At the hearing to reopen this matter the court shall determine if the provisions of 46.6.3 may apply. After the hearing on the matter, the court may decline to reopen the matter, in which case the judgment shall stand, or the court may grant the petition to reopen, in which case a trial date shall be set. The parties may agree to have the trial on the date of the hearing to reopen the matter.

(5) Default judgments may be reopened on all grounds other than failure to receive actual notice by petition for good cause shown within six (6) months of entry of judgment.

(6) Judgment shall be entered by the Clerk within twenty (20) days of the court's oral decision or the court's filing of written findings, conclusions and judgment. A notice of entry of judgment shall thereupon be prepared by the Clerk, who shall mail a copy of said order to all parties.

46.9 Disclosure of Assets.

When a judgment for money damages is entered under this chapter, the court shall order that the judgment debtor execute, under penalty of contempt, within fifteen (15) days of the entry of judgment, unless the judgment is satisfied sooner, a statement, on forms provided by the Clerk, disclosing, as of the date of the judgment, the debtor's name, residence address, employers and their addresses, frequency of pay periods and gross and net pay per period, any non USA trust real property interests, cash on hand, financial institutions in which the debtor has any funds and the amount of the funds in each institution, the names and addresses of all persons who hold any property belonging to the debtor, and all items and property more than \$100.00. Failure to comply with this provision shall result in a show cause hearing to determine if debtor should be held in contempt of court.

46.10 Fees.

(1) Filing Fee. For the filing of a summons and complaint, the Clerk shall collect \$25.00.

(2) Mailing Fee. For service by mail the Clerk shall collect \$3.00 plus the actual cost of certified mail, return receipt requested, return postage guaranteed, for each respondent to be so served.

(3) In actions filed by the Tribe, no fee shall be required.

(4) In actions filed by indigent persons, whose indigence is established by the filing of a verified petition, no fees shall be required under subsection (1) and only the actual cost of mailing shall be required under subsection (2).

46.11 Costs Recoverable.

(1) The prevailing party in an action under this chapter may recover the following costs, which shall be added to the judgment.

a) Actual fees paid under 46.10

b) Actual advocate or attorney fees not to exceed \$100.00.

c) Costs of service.

d) Witness fees and mileage.

e) Post judgment interest of 1 1/2% (one and one-half percent) per month.

(2) The prevailing party shall, within ten (10) days of the announcement of judgment file a certified statement of costs with the Clerk of Court to be taxed to the other party. The other party shall have five (5) days to object, in writing, to the taxation of the costs submitted. Any such conflict may be resolved by court with or without hearing at the court's discretion.

46.12 Sovereign Immunity.

Nothing contained herein shall be construed as a waiver of the Red Cliff Tribe's sovereign immunity from suit, which shall be preserved inviolate, except with respect to counterclaims filed in response to claim filed by the Tribe.

46.13**Frivolous Claims.**

If the Court finds a claim to be frivolous, the Court may dismiss the claim and award costs to the respondent. The Court may also assess expenses incurred by the Court to the petitioner. If the petitioner was granted a waiver of fees, the Court may order the petitioner to perform community service.